

ILLINOIS POLLUTION CONTROL BOARD

May 23, 1972

IN THE MATTER OF)
PETITION FOR VARIANCE BY) PCB 72-101
MERLAN, INC.)
)

Sebat, Swanson and Banks, Attorney for Petitioner
William J. Scott, Illinois Attorney General, by Thomas Immel,
Assistant Attorney General for the Environmental Protection Agency

OPINION OF THE BOARD (by Mr. Dumelle)

This matter is now before us on a Petition for Extension of Time. This case was originally before us upon the complaint of the employees of Holmes Bros., Inc. (PCB 71-39) alleging that Merlan, Inc. created a public nuisance, violated Section 9(a) of the Environmental Protection Act in causing air pollution, violated Section 9(b) of the Act, and violated Section 21(b) and (c) of the Act in dumping excessive water on the street. On September 16, 1971, we ordered Merlan to cease and desist its violations of Section 9(a) of the Act, and also, among other things, to lower their grizzly and enclose their conveyor system by October 15, 1971.

Thereafter, Merlan filed a petition for variance (PCB 71-292) and on December 27, 1971 we extended the time to comply with the provisions of the September 16 order to March 30, 1972.

The instant Petition for Extension of Time, filed March 7, 1972, requests a further extension until July 30, 1972 in which to lower the grizzly. Merlan's main argument in support of its petition is that in order to proceed further it would be necessary to shut the plant down for two weeks in order to dig the pit and install the equipment. Merlan claims that to shut down for two weeks at the present time will work an unreasonable hardship upon its sole customer in that it will disrupt the material flow necessary for its customer's operation.

Merlan suggests that its customer will be closed for two weeks in July, 1972, and at that time Merlan could also be closed to complete the project without imposing any hardship upon its customer.

The instant petition does not appear to change the prior situation. If Merlan were concerned for the welfare of its customer, the point should have been raised in the earlier proceedings before us. Merlan had every opportunity to ascertain before now that its customer would be closed in July. Merlan,

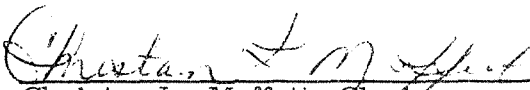
however, elected to proceed on the basis of completing the project by March 30, 1972. We cannot grant a further extension under these circumstances (See Decker Sawmill v. EPA, PCB 72-75, May 17, 1972).

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

It is ordered that the Petition for Extension of Time be and hereby is DENIED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 2nd day of May, 1972 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board